

Annex A:

Dispatchable Power Agreement Gain Share Provisions: High Level Guidance Document

NOTE: This Annex A is intended to be read alongside the Dispatchable Power Agreement Business Model Summary and Consultation (April 2022) and is subject to the "Disclaimer" within it.

1. OVERVIEW

- 1.1 BEIS is minded to include a schedule (the "**Gain Share Schedule**") in all DPAs that are awarded pursuant to the Phase 2 cluster sequencing process. This document provides a summary of the provisions included in the Gain Share Schedule, but should not be taken as a binding or comprehensive representation of those provisions.

The Gain Share Schedule would provide for two types of gain share:

- (a) first, each Generator would be required periodically to share on-going profits with the DPA Counterparty (the "**Project Gain Share**"); and
- (b) second, each investor group which disposes of a material (direct or indirect) Economic Interest in the Generator would be required to share its profits on that disposal with the DPA Counterparty (the "**Sale Gain Share**"),

in each case, if such profits exceed a certain defined threshold.

- 1.2 The Gain Share Schedule would also include certain reporting obligations and provisions to protect the DPA Counterparty's entitlement to share in these profits (see paragraph 6 below), including a requirement for:

- (a) Investors to hold their interests in the Generator through single purpose entities (each a "**TopCo**"), which together will hold all the Economic Interests in a single purpose holding company of the Generator ("**HoldCo**")¹;
- (b) Investors to maintain this structure during the term of the DPA (the "**Investment Structure**") although the Investment Structure requirements remain subject to review and may be modified in appropriate cases;
- (c) Investors and Generators to provide certain behavioural undertakings (e.g. not to undertake any activities that would leak value from the Generator in order to reduce the profits that are available to be shared with the DPA Counterparty); and
- (d) Investors (and where an investor is not the ultimate parent undertaking of its group, that ultimate parent undertaking) to provide information about transfers of Economic Interests.

¹ We expect the requirement for investors to hold their interests in the Generator through single purpose entities, adopt the Investment Structure and certain other requirements to apply but these remain subject to further review and may be amended in appropriate cases.

2. DEFINITIONS AND INTERPRETATION

2.1 In this document:

"Abusive" has the meaning given to it in paragraph 6.3 below;

"Avoidance Events" has the meaning given to it in paragraph 6.2 below;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

"Contracting Policy" means the contracting policy summarised in paragraphs 6.5 and 6.6 below;

"DPA Counterparty" means Low Carbon Contracts Company Ltd, a company incorporated under the laws of England and Wales whose registered office is 10 South Colonnade, London, England, E14 4PU and whose company number is 08818711;

"Economic Interest" is broadly defined to capture all nature of equity, debt and other economic interests subject to limited exceptions for bona fide hedging, third party business financing, commercial contracting and cash pooling arrangements;

"Equity Gain Share Rules" means the provisions summarised in paragraph 6.4 below;

"Equity IRR" means the IRR calculated in relation to a Project Gain Share calculation period;

"Equity IRR Threshold" has the meaning given to it in paragraph 3.1;

"Gain Share Schedule" has the meaning given to it in paragraph 1.1;

"Generator" means [●], a company incorporated under the laws of [●] whose registered office is [●] and whose company number is [●];

"HoldCo" has the meaning given to it in paragraph 1.3;

"HoldCo Group" has the meaning given to it in paragraph 6.1;

"Initial Target Commissioning Window" shall be twelve (12) months, such period commencing on the date agreed prior to the date of the DPA as the start of the Target Commissioning Window. The Target Commissioning Window must end no later than 31 December 2027;

"Investment Structure" has the meaning given to it in paragraph 1.3;

"IRR" means the internal rate of return calculated as the annual discount rate which, when applied to a series of cash flows, produces a net present value equal to zero;

"Investment Costs" has the meaning given to it in Appendix 1;

"Project Cash Flows" has the meaning given to it in paragraph 3.7;

"Project Gain Share" has the meaning given to it in paragraph 1.1;

"Project Gain Share Calculation Date" has the meaning given to it in paragraph 3.6;

"Project Gain Share Due Date" has the meaning given to it in paragraph 3.14;

"Project Gain Share Payment Deadline" has the meaning given to it in paragraph 3.21;

"Qualifying Economic Interest" has the meaning given to in paragraph 4.2(b);

"Relevant Sale" has the meaning given to it in paragraph 4.4;

"Responsible TopCo" has the meaning given to it in paragraph 4.4;

"Sale Cash Flow" has the meaning given to it in paragraph 4.5;

"Sale Gain Share" has the meaning given to it in paragraph 1.1;

"Sale Gain Share Due Date" has the meaning given to it in paragraph 4.12;

"Sale Gain Share Payment Deadline" has the meaning given to it in paragraph 4.14;

"Sale IRR" means the IRR calculated for each TopCo Tranche (as explained in paragraph 4.19 below), or portion thereof which is subject to a Sale Gain Share calculation, comprising the Qualifying Economic Interests which are the subject of a Relevant Sale (in this definition, the **"Relevant TopCo Tranche"**) in relation to the Sale IRR calculation period for such Relevant Sale and calculated using the Sale Cash Flows attributable to the Relevant TopCo Tranche(s) in relation to such Sale IRR calculation period, which thereby presents a Nominal IRR;

"Specified Expiry Date" means [*the 10th, 11th, 12th, 13th, 14th or 15th anniversary of the first to occur of the Start Date and the last day of the Target Commissioning Window*];

"Start Date" means the date that the Generator proposes to be the Start Date for the purposes of the DPA, such date being:

- (a) no earlier than the date on which the Generator notifies the DPA Counterparty that the final operational condition precedent has been fulfilled;
- (b) no earlier than the first (1st) day of the Target Commissioning Window;
- (c) no later than the date which is twelve (12) months following the last day of the Target Commissioning Window (such date may be extended by reason of, for example, force majeure); and
- (d) no earlier than the date on which the Generator gives a notice to the DPA Counterparty (after giving notice to the DPA Counterparty relating to the fulfilment of the final operational condition precedent and in any event no later than ten (10) Business Days after receipt of the DPA Counterparty's response notice or further response notice confirming that the DPA Counterparty considers such operational condition precedent to have been fulfilled);

"Target Commissioning Window" means the Initial Target Commissioning Window for the facility, as such period may be extended day for day for each day of delay to the project by reason of (i) a force majeure event in respect of which the Generator is affected; (ii) the failure of the electricity transmission system operator, electricity transmission licensee or electricity licensed distributor to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the facility and to which any one of them is party; (iii) the failure of the electricity transmission system operator, electricity transmission licensee or electricity licensed distributor to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the facility and to which any gas licensed transporter is a party; or (iv) a transport and storage commissioning delay event, and provided that in the case of delays caused by the reasons in (ii) and/or (iii) above, certain conditions have been met;

"**TopCo**" has the meaning given to it in paragraph 1.3;

"**TopCo Tranches**" has the meaning given to it in paragraph 4.18; and

"**Tracked Person**" means each person summarised in paragraph 4.15 below.

3. **EQUITY GAIN SHARE: PROJECT GAIN SHARE**

Summary

- 3.1 Following certain milestone dates, the DPA Counterparty would be entitled to receive payments from the Generator, calculated by reference to the Generator's available cash flows, if these cash flows reach a defined threshold (the "**Equity IRR Threshold**"). Where an Avoidance Event, Abusive arrangement or breach of the Contracting Policy (each, as defined in paragraph 6.5 below) has reduced the amount of the Generator's cash flow, this may be adjusted to compensate for the effect of that event or arrangement.

Amount and calculation

- 3.2 Where the Generator's Equity IRR exceeds the Equity IRR Threshold, the amount of Project Gain Share payments would be equal to thirty per cent. (30%) of the Generator's available cash flow in excess of the Equity IRR Threshold. The applicable Equity IRR Threshold would be agreed with each Generator and would be set out in each Generator's DPA.
- 3.3 Where a Generator's Equity IRR falls below the Equity IRR Threshold, no Project Gain Share amount would be payable.
- 3.4 The Equity IRR Threshold would be [●] per cent. ([●]%) of the Generator's Equity IRR.²
- 3.5 The Equity IRR of the Generator would be calculated by applying the Equity IRR model which would be prepared, and adjusted, on the basis described in paragraph 5 below.

Milestone dates

- 3.6 The DPA Counterparty's entitlement to Project Gain Share payments would be assessed on:
- (a) the fifth (5th) anniversary of the first to occur of (i) the Start Date under the DPA and (ii) the end of the Target Commissioning Window;
 - (b) the tenth (10th) anniversary of the first to occur of (i) the Start Date under the DPA and (ii) the end of the Target Commissioning Window; and
 - (c) the Specified Expiry Date for each DPA,
- (each a "**Project Gain Share Calculation Date**").
- 3.7 Within forty (40) Business Days after each Project Gain Share Calculation Date, the Generator would be required to present a report to the DPA Counterparty, in a prescribed form, setting out (among other things):
- (a) details of its "**Project Cash Flows**", which would be calculated in accordance with a formula which is summarised in Appendix 1;

² The Equity IRR Threshold would be negotiated on a project by project basis. A negotiated pre-tax Equity IRR Threshold may be used.

- (b) amounts retained by the Generator;
- (c) incurred and forecast administrative costs and expenses;
- (d) any distributions which have been made, and are proposed to be made, to each investor TopCo; and
- (e) the Generator's calculation of the Equity IRR for the period from (and including) [●] 20[●] to (but not including) the relevant Project Gain Share Calculation Date.³

3.8 The report would be accompanied by:

- (a) a directors' certificate, an auditors' certificate and other supporting information; and
- (b) copies of the Generator's latest audited accounts covering at least three fifths of the relevant calculation period, and management accounts for the balance of that period.

3.9 If the Generator fails to provide a report in accordance with these requirements, the DPA Counterparty may:

- (a) obtain, at the Generator's cost and expense, an opinion from an independent expert as to the Equity IRR for the period that would otherwise have been covered by the relevant report; and
- (b) suspend the payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation.

3.10 The DPA Counterparty would have ninety (90) Business Days following receipt of the report within which to notify the Generator whether or not it approves the report. Where the DPA Counterparty does not approve the report, the DPA Counterparty would be required to give the Generator its reasons in support. If the Generator and the DPA Counterparty are not able to agree the matters which are the subject of a report, either the Generator or the DPA Counterparty would be able to refer the dispute for determination by an expert in accordance with the expert determination procedure.

3.11 The Gain Share Schedule will include an expert determination procedure by which any disputes may be resolved if the report is not accepted within this period.

Payment

3.12 Once the report is agreed or (in the event of a dispute) an expert determination has been made in respect of the report, any Project Gain Share payment (calculated as set out in paragraphs 3.2 to 3.5 above) would be due and payable by the Generator to the DPA Counterparty.

3.13 The DPA Counterparty may elect, after consulting with the Generator, to receive any Project Gain Share payment from the Generator:

- (a) as a series of payments; and/or
- (b) as a single lump sum payment.

3.14 All payments would be required to be made no later than:

³ Note to Reader: the Project Gain Share Calculation Period shall commence on the date on which the first investment was made into the Project.

- (a) the date falling ten (10) Business Days after agreement or determination of the report for the relevant calculation period; or
- (b) if the DPA Counterparty elects to receive any Project Gain Share amount by way of a series of payments, the relevant due date for payment as determined by the DPA Counterparty,

(together, the "**Project Gain Share Due Date**").

3.15 The Gain Share Schedule would also provide for Project Gain Share payments to be repaid to the Generator to the extent that they represent an overpayment by reference to the Equity IRR which is tested at a subsequent Project Gain Share Calculation Date⁴.

Security

3.16 The Generator would be required to, no later than the twelfth (12th) anniversary of the first to occur of (i) the Start Date under the DPA and (ii) the end of the Target Commissioning Window, provide collateral in respect of its obligations to make future Project Gain Share payments to the DPA Counterparty.

3.17 The collateral amount would be the amount equal to £35,000 multiplied by the Generator's "Net Dependable Capacity Estimate" (in MW) under the DPA.

3.18 Collateral may be provided in cash or (subject to the collateral provider having a minimum short-term credit rating of A-1 with Standard & Poor's, P-1 with Moody's or F1 with Fitch or otherwise having a financial standing acceptable to the DPA Counterparty) by way of a letter of credit, a bond, a parent company guarantee, or any combination of them.

3.19 If the Generator fails to:

- (a) make a Project Gain Share payment to the DPA Counterparty and that failure is not remedied within a defined cure period; or
- (b) renew or extend, or procure the renewal or extension of, a letter of credit, parent company guarantee or a bond within the time limits set out in the Gain Share Schedule where:
 - (i) an insolvency event occurs in relation to a collateral provider;
 - (ii) a form of collateral ceases to be in full force and effect, or a collateral provider's obligations are or become wholly or partly invalid or unenforceable, or a collateral provider fails to comply promptly with any of its obligations pursuant to a form of collateral;
 - (iii) in the case of a letter of credit or a bond, the form of collateral is due to expire; or
 - (iv) a collateral provider ceases to have the minimum short-term credit rating or (in the case of a parent company guarantee) the guarantor ceases to have a minimum value of consolidated net assets,

then:

⁴ These provisions are subject to further development in the Gain Share Schedule.

- (v) the DPA Counterparty may make a demand under the collateral, or draw down on any cash amount in a reserve account;
- (iv) the DPA Counterparty may set off the collateral amount against any or all other amounts owing by the DPA Counterparty to the Generator; and
- (v) the TopCos would be obliged jointly and severally to ensure that no distributions are thereafter made by the Generator, HoldCo, or any of the TopCos for so long as the Generator fails to renew or extend the collateral.

3.20 If:

- (a) the Generator fails to transfer, deliver, extend, renew or replace collateral;
- (b) any form of collateral expires or terminates or ceases to be in full force and effect and is not extended, renewed or replaced; or
- (c) the Generator, or any collateral provider, disclaims, repudiates or rejects any collateral provided to the DPA Counterparty,

the DPA Counterparty would have the right, but not the obligation, to give notice to the Generator terminating the DPA.

Enforcement

3.21 If the Generator fails to make a Project Gain Share payment by the Project Gain Share Due Date:

- (a) each TopCo would be jointly and severally liable to pay the outstanding amount to the DPA Counterparty no later than five (5) Business Days after such agreement or determination (the "**Project Gain Share Payment Deadline**"); and
- (b) if payment of the outstanding amount is not made by the Project Gain Share Payment Deadline then the DPA Counterparty may:
 - (i) suspend the payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in the period during which the Generator is in breach of such payment obligation;
 - (ii) require that no distributions are made by the Generator, HoldCo or any TopCo while the amount is outstanding;
 - (iii) set off the relevant Project Gain Share payment against any or all other amounts owing (whether or not matured, contingent or invoiced) by the DPA Counterparty to the Generator; and/or
 - (iv) draw on the collateral.

4. EQUITY GAIN SHARE: SALE GAIN SHARE

Introduction

4.1 Following the sale of a direct or indirect Economic Interest in the Generator, the DPA Counterparty would be entitled to receive a payment if certain conditions are met (as set out in paragraph 4.2 below). Where an Avoidance Event, Abusive arrangement or breach of the Contracting Policy has reduced the amount of the Sale Cash Flows used to calculate this

payment, these cash flows may be adjusted to compensate for the effect of that event or arrangement.

Sale Gain Share liability conditions

4.2 The conditions which must be satisfied for the DPA Counterparty to be entitled to payment by the Generator are as follows:

- (a) first, the sale must occur before the later of:
 - (i) the date falling five (5) years after the Start Date under the DPA; and
 - (ii) the date on which the aggregate Economic Interests of the investor group undertaking falls below sixty per cent. (60%) of the aggregate Economic Interest held by that investor group on the date of the DPA (or, if later, the date on which the relevant investor acceded to the DPA); and
- (b) second, the direct or indirect Economic Interest in the Generator must represent at least sixty per cent. (60%) of the value of the entity which is being sold (a "**Qualifying Economic Interest**").

These conditions are designed to ensure that Sale Gain Share payments are not triggered by immaterial disposals.

4.3 Certain exceptions will be made for interests in the securities which are publicly traded on a recognised UK securities exchange and for interests in collective investment schemes.

Amount, calculation and persons responsible

4.4 Where the Sale IRR attributable to the relevant TopCo Tranche (as explained in paragraphs 4.5 and 4.18 below) on the sale of a Qualifying Economic Interest (a "**Relevant Sale**") exceeds the Equity IRR Threshold, the following parties would be jointly and severally liable to make a payment to the DPA Counterparty equal to thirty per cent. (30%) of the amount in excess of the Equity IRR Threshold:

- (a) the TopCo in the investor group from which the sale was made (the "**Responsible TopCo**");
- (b) the seller (if it is a party to the DPA); and
- (c) the acquirer and the acquirer's TopCo (if they are parties to the DPA).

Sale IRR

4.5 The Sale IRR would be calculated by reference to the sale cash flow calculated in accordance with a formula which is summarised in Appendix 2 (the "**Sale Cash Flow**") attributable to the Responsible TopCo during the period from (and including) the later of:

- (a) the date of the DPA; and
 - (b) the date of completion of the previous Relevant Sale,
- to (and including) the date of completion of the Relevant Sale.

Determination process

- 4.6 Within twenty (20) Business Days after completion of a Relevant Sale, the Responsible TopCo would be required to present a report to the DPA Counterparty, in a prescribed form, setting out (among other things):
- (a) details of the seller, acquirer and Economic Interest which is the subject of the Relevant Sale;
 - (b) the date of execution and completion of the sale agreement;
 - (c) the amount of the consideration;
 - (d) details of any change in the Economic Interests held by the relevant investor's group and the acquirer's group;
 - (e) details of any external investors who will be acquiring Economic Interests under the Relevant Sale (see explanation of "**Tracked Person**" in paragraph 4.15 below); and
 - (f) the Responsible TopCo's calculation of the Sale IRR.
- 4.7 This report would be required to confirm that there has been no Avoidance Event, Abusive arrangement or breach of the Contracting Policy. If such an event has occurred, the report must include a calculation of the consequent reduction in the Sale Gain Share amount, which would be added back to that amount.
- 4.8 This report would be accompanied by a directors' certificate, together with other supporting information.
- 4.9 If the Responsible TopCo fails to provide a report in accordance with these requirements, the DPA Counterparty may obtain, at the Responsible TopCo's cost, an independent expert opinion as to the Sale IRR.
- 4.10 The DPA Counterparty would be required, within thirty (30) Business Days after:
- (a) the date on which it received the report; or
 - (b) if later, the date on which it received any further information it requires to assess the report,
- notify the Responsible TopCo whether or not it approves the report. Where the DPA Counterparty does not approve the report, the DPA Counterparty would give the Responsible TopCo its reasons in support.
- 4.11 The Gain Share Schedule includes an expert determination procedure by which any disputes may be resolved if the report is not accepted within this period.

Payment

- 4.12 Any Sale Gain Share payment would be due and payable within ten (10) Business Days after the report is agreed, or an expert determination has been made in respect of such report (the "**Sale Gain Share Due Date**").
- 4.13 Provisions would be included to capture any deferred, contingent or other delayed consideration.

Enforcement

- 4.14 If the Responsible TopCo fails to make a Sale Gain Share payment by the Sale Gain Share Due Date:
- (a) the Responsible TopCo(s) or (if party to the DPA) the seller, the acquirer or the acquirer's TopCo would be jointly and severally liable for the outstanding amount which must be paid within five (5) Business Days after determination that payment is due (the "**Sale Gain Share Payment Deadline**"); and
 - (b) if payment of the outstanding amount is not made by the Sale Gain Share Payment Deadline then the DPA Counterparty may:
 - (i) suspend the payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in the period during which the Generator is in breach of such payment obligation; and/or
 - (ii) set off the relevant Sale Gain Share payment against any or all other amounts owing (whether or not matured, contingent or invoiced) by the DPA Counterparty to the Generator.

Tracked Persons

- 4.15 Investor groups would be required to disclose details of:
- (a) each person who holds an Economic Interest in HoldCo through the relevant investor or TopCo;
 - (b) each person of the investor group (or TopCo group) who holds an Economic Interest in HoldCo; and
 - (c) each person who is not a member of the investor's group and receives a transfer or issue of an Economic Interest which will result in that person holding an aggregate Economic Interest in HoldCo exceeding a certain threshold. This threshold will be met if the relevant person's aggregate Economic Interest in HoldCo is greater than three and a half per cent. (3.5%) of the book value of HoldCo's aggregate Economic Interests in the Generator,
- (each person being a "**Tracked Person**").

4.16 Investors would be required to procure compliance by their Tracked Persons with the principles described in paragraph 6 below.

4.17 See Appendix 3 for some worked examples of the application of these provisions.

TopCo Tranches

4.18 As disposals of Economic Interests may occur at any level in an investor group, the Gain Share Schedule will include a concept of "**TopCo Tranches**" in order to assess the actual gain arising on a Relevant Sale. Each TopCo Tranche would track the separate shares in the Generator's cash flows and in the proceeds of any sale to which persons with an Economic Interest in the Generator are entitled.

4.19 See Appendix 4 for some worked examples of the application of these provisions.

5. THE EQUITY IRR MODEL

- 5.1 The Equity IRR model would be based on the Generator's management accounts, reconciled to the latest available audited financial information, and would set out the key metrics used to calculate any gain share payments.
- 5.2 The Equity IRR model would be available, in electronic form, to the Generator and the DPA Counterparty.
- 5.3 The Generator would be required to submit a revised draft of the model to the DPA Counterparty annually, until the fifteenth (15th) anniversary of the first to occur of (i) the Start Date under the DPA and (ii) the end of the Target Commissioning Window, and as necessary to rectify any technical IT issues.
- 5.4 The revised Equity IRR model would be prepared at the cost and expense of the Generator.
- 5.5 The Generator would be responsible for making the necessary revisions and for providing a written explanation of the modifications. These would be accompanied by a directors' certificate affirming their accuracy.
- 5.6 The DPA Counterparty may, within sixty (60) Business Days after receipt of a draft revised Equity IRR model, request the Generator to provide the DPA Counterparty with such supporting information as the DPA Counterparty reasonably requires.
- 5.7 If the DPA Counterparty makes such a request, the Generator would have sixty (60) Business Days after receipt of the request within which to prepare and deliver such supporting information to the DPA Counterparty, together with a directors' certificate in relation to the supporting information.
- 5.8 If there is any discrepancy between the Equity IRR model and the Gain Share Schedule, the Gain Share Schedule would prevail.

6. GAIN SHARE PRINCIPLES

- 6.1 The Generator, HoldCo, the TopCos, the investor and any Tracked Persons would be prohibited from undertaking certain Avoidance Events or entering into Abusive arrangements, and would be required to comply with certain Equity Gain Share Rules (as set out in paragraph 6.4 below) and a prescribed Contracting Policy (as set out in paragraphs 6.5 and 6.6 below) in relation to the Generator and HoldCo (together, the "**HoldCo Group**"). Investors would be required to give undertakings to procure compliance.

Avoidance Events

- 6.2 "**Avoidance Events**" would be broadly defined to include any action taken to evade or reduce a gain share payment, leak value from the HoldCo Group, manipulate the Tracked Person threshold or avoid a sale of Economic Interests being treated as a Relevant Sale. There would be exceptions for certain bona fide commercial transactions which are not designed to have any of these effects.

Abusive arrangements

- 6.3 An arrangement would be regarded as "**Abusive**" if:
- (a) its result is inconsistent with the principles of gain sharing;
 - (b) it involves abnormal or contrived steps;

- (c) it exploits any shortcomings in the Gain Share Schedule; or
- (d) it cannot reasonably be regarded as a reasonable course of action having regard to the Gain Share Schedule.

Equity Gain Share Rules⁵

6.4 The Equity Gain Share Rules will include provisions to the following effect:

- (a) the Investment Structure must be maintained;
- (b) the Generator must be a single purpose company with no assets or liabilities other than its interest in the project and related liabilities;
- (c) HoldCo must be a pure holding company with no business, assets or liabilities other than its 100% shareholdings in the Generator;
- (d) the Generator and HoldCo must be English, private limited companies with their centre of main interests in England;
- (e) the Generator, HoldCo and each TopCo must be tax residents in England;
- (f) restrictions on the grant of security, guarantees or indemnities or lending by the Generator, HoldCo or any TopCo;
- (g) the Generator, HoldCo and each TopCo would be prohibited from creating or issuing Economic Interests other than as necessary to fund the project. The funding to pay up any Economic Interests created or issued to fund the project would be routed through the TopCo(s) to HoldCo and from HoldCo to the Generator;
- (h) each TopCo must be solely an investment holding company which holds shares only in HoldCo and performs its obligations pursuant to relevant project related documents and has no other assets or liabilities; and
- (i) when an Economic Interest is transferred, a pro-rata proportion of the equity, debt and other components of that interest must be transferred together.

Contracting Policy

6.5 Related party transactions between the Generator and other members of an investor group must:

- (a) be necessary for the project and in the best interests of the Generator;
- (b) be charged at cost;
- (c) not be structured or operated so as to leak value, or actually leak value, from the Generator;
- (d) be on terms which are not unduly favourable to the investor group; and
- (e) be terminable by the Generator for convenience on reasonable notice, and the Generator's liability on termination must be limited to the counterparty's reasonable costs up to the termination date and reasonable demobilisation costs.

⁵ These rules are subject to further review and may be amended in appropriate cases.

6.6 Third party transactions entered into by the Generator must be:

- (a) on terms not materially less favourable to it than comparable contracts in the sector and must not lack commercial purpose or involve artificial steps; and
- (b) terminable by the Generator for convenience on reasonable notice and the Generator's liability on termination must be limited to the counterparty's reasonable costs up to the termination date and reasonable demobilisation costs.

7. **ACCESSION**

The Gain Share Schedule would include obligations that apply to relevant parties to procure the accession to the DPA of any person who acquires an Economic Interest in the Generator (whether by transfer or by the creation or issue of new Economic Interests and whether at, above or below, the level of the relevant TopCo).

8. **WARRANTIES**

Each of the Generator, HoldCo, the TopCos, the investor and the ultimate investors would be required to give customary warranties as to:

- (a) its status;
- (b) its power and authority to enter into, deliver and perform the DPA;
- (c) the enforceability of the DPA;
- (d) non-conflict of the DPA with its other obligations; and
- (e) the absence of any requirement to make withholdings or deductions from payments.

APPENDIX 1

Summary of Project Cash Flow formula

$$\text{PCF} = \text{ACF} + \text{PACF} - \text{E} - \text{IC} - \text{PGSA}$$

where:

- PCF** is the Project Cash Flow (expressed in pounds sterling);
- ACF** is the aggregate of the amounts of the Generator's available cash flow calculated as at the relevant Project Gain Share Calculation Date;
- PACF** is the aggregate of the amounts of the Generator's available cash flow as at each previous Project Gain Share Calculation Date;
- E** is the aggregate of the following amounts (excluding, in relation to any Sale Gain Share calculation, consideration paid by the relevant acquiror to acquire an Economic Interest after the time of its initial investment adjusted, if necessary, to compensate for the effect of any breach of the Gain Share Principles), and a pro rata share of associated professional costs ("**Investment Costs**"):
- (i) (a) the amount of equity injections received by the Generator on or after its date of incorporation;
 - (b) the principal amount of all shareholder loans made to the Generator; and
 - (c) the amount paid to the Generator in respect of any other Economic Interest,

for the purposes of funding project costs (and not, for the avoidance of doubt, funding distributions) and without double counting, and calculated as at the date of the relevant payment or advance, as applicable;
- (ii) a fixed credit support cost equal to an annual rate of [●] per annum accruing on a daily basis on the collateral amount provided pursuant the Gain Share Schedule; and
- (iii) [●]⁶
- IC** in any calculation of Project Cash Flow to be included in a calculation of Sale Cash Flow, is the Investment Cost (if any) attributed to such TopCo Tranche as at the date such TopCo Tranche was created following a Relevant Sale, apportioned where a portion of such TopCo Tranche is the subject of a Sale Gain Share calculation, and calculated as at the date of completion of the Relevant Sale and otherwise, IC is zero; and
- PGSA** is the Project Gain Share Amount already the Generator, calculated as at the date of such payment.

When Project Cash Flows are being calculated for inclusion in any calculation of a Sale Cash Flow, the amounts of ACF, PACF and PGSA shall be the amounts apportioned to the relevant TopCo Tranche and the amounts in E(i) shall be the amounts paid by the relevant investor TopCo (excluding Investment Costs). (See Appendix 2).

⁶ Fixed credit support cost to be set on a project by project basis.

APPENDIX 2

Summary of Sale Cash Flow formula

$$\text{SCF} = \text{ACF} + \text{PACF} + \text{DP} - \text{E} - \text{IC} - \text{PGSA}$$

where:

- SCF** is the Sale Cash Flow (expressed in pounds sterling);
- ACF** is the pro-rata share of the aggregate amount of the Generator's available cash flow, as at the Project Gain Share Calculation Date immediately preceding the date of completion of the Relevant Sale which is attributable to the relevant TopCo Tranche;
- PACF** is the pro-rata share of the aggregate of the amount of the Generator's available cash flow, as at each previous Project Gain Share Calculation Date which is attributable to the relevant TopCo Tranche;
- DP** is the net divestment proceeds which is attributable to the relevant TopCo Tranche;
- E** is the aggregate of the following amounts (excluding any Investment Cost) attributable to the relevant TopCo Tranche (or part thereof):
- (i) (a) the amount of equity injections made by the Responsible TopCo into HoldCo on or after the date of incorporation of the Generator;
 - (b) the principal amount of all shareholder loans made by the Responsible TopCo to HoldCo;
 - (c) the amount paid by the relevant investor in respect of any other Economic Interest in HoldCo, in each case to the extent that the same amount is contributed to the Generator to fund the project, calculated as at the date of the relevant payment or advance;
- (ii) a fixed credit support cost equal to an annual rate of [●] per annum accruing on a daily basis on the collateral amount provided pursuant to the Gain Share Schedule; and
- (iii) [●]⁷
- IC** is the Investment Costs attributable to the relevant TopCo Tranche calculated as at completion of the Relevant Sale; and
- PGSA** is the pro-rata share attributable to the relevant TopCo Tranche of the aggregate of all Project Gain Share amounts already paid.

⁷ Fixed credit support cost to be set on a project by project basis.

APPENDIX 3

Tracked Persons: worked examples

Example 1

Investor A holds no shares in TopCo at the time of the initial investment. These are held by a wholly-owned subsidiary of Investor A (Sub 1).

Sub 1 is a Tracked Person in relation to Investor A.

Example 2

Investor A holds 100% of its Economic Interest in HoldCo through its direct holding of 100% of the shares in its TopCo.

Investor A restructures its group, transferring the shares in its TopCo to a wholly-owned subsidiary of Investor A (Sub 2).

Sub 2 is a Tracked Person in relation to Investor A.

Example 3

Sub 2 issues new shares to a third party funder (Funder). These shares represent more than 3.5% of the book value of HoldCo's aggregate Economic Interests in the Generator on a look-through basis.

Funder is a Tracked Person in relation to Investor A.

Example 4

Investor A holds 100% of its Economic Interest in HoldCo through its direct holding of 100% of the shares in its TopCo.

Investor A transfers 1% of its shareholding in HoldCo to a third party (Third Party). This shareholding does not represent 3.5% or more of the book value of HoldCo's aggregate Economic Interests in the Generator on a look-through basis.

Third Party is not a Tracked Person in relation to Investor A.

Example 5

Investor A holds 100% of its Economic Interest in HoldCo through its direct holding of 100% of the shares in its TopCo.

Investor A transfers 1% of its shareholding in HoldCo to a third party (Third Party). This shareholding represent 2% of the book value of HoldCo's aggregate Economic Interests in the Generator on a look-through basis.

Third Party 2 already holds an indirect Economic Interest in HoldCo which represents 3% of HoldCo's aggregate Economic Interests in the Generator on a look-through basis.

Third Party 2 is a Tracked Person in relation to Investor A.

APPENDIX 4

TopCo Tranches: worked examples

Example 1

Investor A and Investor B each hold 50% of the aggregate Economic Interests in HoldCo indirectly through separate TopCos (TopCo A and TopCo B).

Investor A's group holds its Economic Interests in HoldCo through several subsidiaries (Sub 1, Sub 2 and Sub 3), which together hold all the shares in TopCo A. Sub 1 holds 20% of the Economic Interests held by the Investor A group; Sub 2 holds 30% of the Economic Interests held by the Investor A group; Sub 3 holds 50% of the Economic Interests held by the Investor A group.

The aggregate Economic Interests of Sub 1, Sub 2 and Sub 3 comprise a single TopCo Tranche in respect of TopCo A.

Investor B holds its entire Economic Interests in HoldCo through its direct holding of 100% of the shares in TopCo B.

Investor B's Economic Interests in HoldCo comprise a single TopCo Tranche in respect of TopCo B.

Investor A then sells Sub 2 and Sub 3 to Investor B.

Investor A's TopCo Tranche is reduced by 80%; Investor B's TopCo Tranche is correspondingly increased.

Example 2

Investor A and Investor B each hold 50% of the aggregate Economic Interests in HoldCo indirectly through separate TopCos (TopCo A and TopCo B).

Investor A's Economic Interests in HoldCo comprise a single TopCo Tranche in respect of TopCo A.

Investor B's Economic Interests in HoldCo comprise a single TopCo Tranche in respect of TopCo B.

Investor B transfers 60% of its Economic Interests in HoldCo to a new subsidiary (Sub 1) and 40% of its Economic Interests in HoldCo to a new subsidiary (Sub 2).

Investor B then sells Sub 1 to a new investor (Investor X).

The TopCo B Tranche will be reduced to reflect the Economic Interests in HoldCo retained through Sub 2.

A Sale Gain Share calculation will be made in respect of the Economic Interests in HoldCo which Investor B has disposed of by selling Sub 1.

Investor X is required to hold its interest through a new TopCo (TopCo X). A new TopCo Tranche is established in respect of TopCo X.

The TopCo A Tranche is unaffected.

Example 3

On Day 1, Investor A's group holds Economic Interests in HoldCo through a wholly owned subsidiary (Sub 1) which holds all the shares in TopCo.

The Economic Interest of Sub 1 comprises a single TopCo Tranche in respect of TopCo A.

Sub 1 issues new shares to an external investor (Investor X). Investor X is required to hold those new shares through a new TopCo (TopCo X). Investor X's Economic Interest in HoldCo (through its holding of new shares in Sub 1 through TopCo X) comprises a single TopCo Tranche in respect of TopCo X.

Example 4

Investor A's group holds all the Economic Interests in HoldCo through TopCo A. These comprise a single TopCo Tranche in respect of TopCo A.

TopCo A sells 25% of its shares in HoldCo to an external investor (Investor X). Investor X is required to hold those new shares through a new TopCo (TopCo X).

The TopCo A Tranche is reduced by 25%.

A new TopCo X tranche is established representing the 25% Economic Interest transferred.